

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:11cv141**

**TAMMY BRYAN**

**Plaintiff,**

**v.**

**KATHY J. BRYAN, formerly known as  
Kathy J. Chidnese,**

**Defendant.**

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**ORDER**

Pending before the Court is the Motion to Quash [# 62] filed by Third Party Diane K. McDonald. Plaintiff served a subpoena on Diane McDonald on October 16, 2012, to appear and testify at the trial on October 22, 2012. The subpoena was issued October 12, 2012.

Third Party McDonald is an attorney who previously represented Patrick Chidnese in several legal matters. Plaintiff served a subpoena on Third Party McDonald to appear and testify at the trial on October 22, 2012, at 10:00 a.m. and to bring the original file documents of Patrick Chidness related to two other civil proceedings. Third Party McDonald contends that the subpoena requires the disclosure of privileged material.

Rule 45(c)(A)(iii) provides that the Court must quash a subpoena that “requires disclosure of privileged or other protected matter, if no exception or

waiver applies. . . .” Requiring Third Party McDonald to appear and testify at trial as to her file regarding two prior cases and to produce her working file would without question involve disclosing documents, issues, and/or conversations protected by the attorney client privilege or the attorney work product doctrine.

Moreover, the Court finds that allowing the subpoena would subject Third Party McDonald to an undue burden. Plaintiff is at the last minute attempting to obtain the information and documents that she failed to obtain during the discovery period in this case by issuing a subpoena to an attorneys to appear at the trial testify and produce the documents contained in her files. Based on all the circumstances of this case and based on the information in the record, the Court finds that it would constitute an undue burden to require Third Party McDonald to appear and testify at trial. Accordingly, the Court **GRANTS** the Motion to Quash [# 62]. The Court **QUASHES** the subpoena of Diane K. McDonald.

Signed: October 19, 2012

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Dennis L. Howell  
United States Magistrate Judge

